

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2321 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

YAKUBBHAI YUSUFBHAI ALAD

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioner

MR.RM CHAUHAN, APP for Respondent No. 1

MR JD AJMERA for Respondent No. 4

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 17/06/98

ORAL JUDGEMENT

The petitioner in this petition under Article 226 of the Constitution of India has challenged the order of detention dated 23-1-1998 passed against him by the District Magistrate, Kheda under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980. In the grounds of detention supplied to the detenu, a number of allegations

have been made regarding the involvement of the petitioner-detenu in the unauthorised disposal of kerosene. However, since this petition is capable of being disposed of on the short ground of delay in considering the representation made by the detenu, it is not necessary to narrate the allegations made in the grounds of detention supplied to the detenu.

Mr. Tirmizi, learned Advocate for the petitioner has urged number of contentions. However, as stated above, since this petition is capable of being disposed of on the short ground of delay in considering the representation, it is also not necessary for me to refer to and deal with the other contentions raised by Mr. Tirmizi.

Mr. Tirmizi submitted that the petitioner made a representation on 21-3-98 to the Minister of Civil Supplies. However, the said representation was placed for consideration on 1-4-98 and thus there is a delay in deciding the representation. It is the case of the petitioner that the representation dated 21-3-98 was received by the office of the concerned Minister on 23-3-98 which is clear from the endorsement made on the acknowledgement receipt of speed-post. An affidavit in reply has been filed by the Under Secretary to the Government of Gujarat, Food, Civil Supplies and Consumer Affairs Department, wherein it has been pointed out that the representation dated 21-3-98 addressed to the Hon'ble Minister, Civil Supplies was received on 31-3-98. The said representation was sent to the office of the Food, Civil Supplies and Consumer Affairs Department on 1-4-98 with the remarks of the Private Secretary to the Minister that "Hon'ble Minister, Civil Supplies, has directed to examine and put up". In connection with the said note on the representation, the file of the said representation was put up with a note dated 2-4-98 before the Section Officer by the concerned Branch. The Section Officer cleared the said file with a detailed typed note on the same day i.e. on 2-4-98 and submitted before the Under Secretary and Deputy Secretary. The said file was cleared by both the officers on the same day i.e. on 2-4-98 and put up before the Additional Chief Secretary. The said file of representation was cleared by the Additional Chief Secretary on 3-4-98 and submitted before the Minister of Civil Supplies on 3-4-98 which was cleared by the Minister of Civil Supplies on 3-4-98 i.e. on the same day. In substance, it is the case of the respondent that the representation addressed to the Minister of Civil Supplies was considered by the State Government without any delay. The petitioner in

rejoinder has produced the acknowledgement receipt and has pointed out that the office of the Minister, Civil Supplies had in fact received the representation on 23-3-98. I have personally verified the original representation addressed by the petitioner to the Minister. Perusing the same, it appears that there is no endorsement made on it about the date of receipt of the representation. The representation started moving from the date 31st March 1998 made by Private Secretary to the Minister. It would go to show that the representation was in fact received on 23rd March 1998 but for any reason the same was not placed before the Minister and/or no action was taken on it till 31-3-98. Thus, there was obvious delay of seven days in considering the representation which has vitiated the continued detention of the detenu. It is also the case of the petitioner that in the said representation, the petitioner had demanded certain documents from the detaining authority. However, the same were not supplied to the detenu. Since this petition is being disposed of on the ground of delay in considering the representation, it is not necessary to deal with this submission of the petitioner.

In the result, this petition is allowed. The detention order dated 23-1-1998 is quashed and set aside.

The detenu Yakubbhai Yusufbhai Alad is ordered to be released forthwith if not required in connection with any other case. Rule is made absolute to the aforesaid extent with no order as to costs.

Verified copy